

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3285 OF 2001

Syed Saud s/o Syed Masood,
Aged 27 years, Occu. Service,
R/o. House No: 3-3-79 Hakim Mohalla,
Old Jalna, Jalna.

...Petitioner..

Versus

1. The State of Maharashtra,
(Copy to be served on the Govt.
Pleader, High Court,
Bench : Aurangabad).
2. The Collector,
Jalna.
3. The Municipal Council,
(Through Its Chief Officer),
Jalna.

...Respondents..

ALONG WITH

WRIT PETITION NO. 3256 OF 2001

Dnyaneshwar s/o Ram Jadhav,
Aged 32 years, Occu. Service,
R/o C/o Sambhare's Plot
Sahyognagar, Ambad Road, Jalna.

...Petitioner..

Versus

1. The State of Maharashtra,
(Copy to be served on the Government
Pleader, High Court,
Bench : Aurangabad).
2. The Collector,
Jalna.
3. The Municipal Council,
(Through Its Chief Officer),
Jalna.

...Respondents..

ALONG WITH

WRIT PETITION NO. 3297 OF 2001

Sanjay s/o Saluji Waghmare,
Aged 27 years, Occu. Service,
R/o Daduram Ustad Vyayam Shala
Gurav Gully, Quadrabad Jalna.

...Petitioner..**Versus**

1. The State of Maharashtra,
(Copy to be served on the Government
Pleader, High Court,
Bench : Aurangabad).
2. The Collector,
Jalna.
3. The Municipal Council,
(Through Its Chief Officer),
Jalna.

...Respondents..**ALONG WITH****WRIT PETITION NO. 3364 OF 2001**

Ramesh s/o Umaji Waghmare, etc.

...Petitioner..**Versus**

The State of Maharashtra and ors. etc

...Respondents..

In all matters :
Mr S. B. Talekar, Advocate for petitioners
Mr S. B. Pulkundwar, AGP for respondent/State
Mr H. K. Munde, Advocate for respondent No. 3

**CORAM : S. V. GANGAPURWALA &
N. W. SAMBRE, JJ.**

DATE : MARCH 5TH, 2014

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :

1. Heard learned Counsel for respective parties.
2. The present writ petitions are filed assailing the order dated 27th June, 2001 cancelling the promotion so also order dated 9th July, 2001 directing recovery of the difference of pay and allowances from the salary of the petitioners.
3. Mr Talekar, the learned Counsel for the petitioners submits that, no speaking order has been passed, no opportunity of hearing has been given, as such the order impugned is bad in law.
4. Mr H. K. Munde, the learned Counsel for respondent No. 3 supports the resolution and submits that by mistake promotion orders have been given to the petitioners, the same has been rectified.
5. This Court vide order dated 30th August, 2001, has observed that the rule is being issued only with respect to the recovery of salary and had concluded that the promotions of the petitioners were of temporary nature. We need not go into the same as, now the matter is restricted to the recovery of the salary paid to the petitioners of the promotional post.

6. If some excess amount has been paid and same is not due to the fault of the petitioners, the recovery cannot be made as is held by the Hon'ble Apex Court in a case of **Syed Abdul Qadir and Others Versus State of Bihar and Others** reported in (2009)3 SCC 475.

7. Even otherwise, it is not the case of the respondents, that the petitioners have not worked on the said promotional post.

8. Considering the above, the Rule is made absolute in terms of the interim orders passed. No costs.

(N. W. SAMBRE, J.) (S. V. GANGAPURWALA J.)

Punde